

**District of Columbia Office of Administrative Hearings**

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DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND  
REGULATORY AFFAIRS

Petitioner,

v.

A.L WIGGINS AND JAMES WIGGINS  
Respondent

Case No: 2011-DCRA-S702380  
2011-DCRA-S702381

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**FINAL ORDER**

**I. Introduction**

On October 25, 2011, the Department of Consumer and Regulatory Affairs (DCRA) served two Notices of Infraction on Respondents Ada L. Wiggins and James Wiggins. In Notice of Infraction S702380, DCRA alleged that the following four violations occurred on February 4, 2011 at 566 25<sup>th</sup> Street, N.E: (1) operating an apartment house without a basic business license; (2) operating a barber shop without a basic business license; (3) operating an apartment house without a certificate of occupancy; and (4) operating a barber shop without a certificate of occupancy.

In Notice of Infraction S702381, DCRA charged four additional violations. These violations were alleged to have occurred about a year earlier, on January 31, 2010, at 2401 Benning Road, N.E. The four violations charged in this second Notice of Infraction are as

follows: (1) operating an apartment house without a basic business license; (2) operating a commercial rental property without a basic business license; (3) operating an apartment house without a certificate of occupancy; and (4) operating a commercial rental property without a certificate of occupancy. DCRA seeks a fine of \$2,000 for each of the eight violations charged for a total of \$16,000.

Respondents filed a plea of Deny to all of the charges. The hearing was originally scheduled for January 3, 2012, but it was continued twice and held on February 21, 2012. At the hearing, Terrell Hill, the inspector who issued the Notices of Infraction, appeared and testified for DCRA. Frazier Walton, Esq. represented Respondents. James Wiggins testified for Respondents. Other witnesses for Respondents were Winston Jackson, Veronica Raglin, and Everett Payne.

Based on the testimony at the hearing, the documents admitted into evidence, and the entire record, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact: Notice of Infraction S702380- 566 25<sup>th</sup> Place N.E**

Respondents, who are married, own the property located at 566 25<sup>th</sup> Place N.E.

### **A. Charges relating to operation of barber shop at 566 25<sup>th</sup> Place N.E.**

Mr. Wiggins, who is 80 years old, has held a professional license as a master barber for over fifty years. For about forty years, he operated a barber shop at 2407 Benning Road, N.E. He closed the business in 2006, after a fire severely damaged the building in which the barber shop was located. Respondents' Exhibit "RX" 203-3 and 203-4.

Mr. Wiggins has visited shut-ins and individuals in hospitals for a number of years to provide barbering services without charge. After the fire, he continued to provide these services, but he did not re-open a barber shop at a new location.

On February 4, 2011, Inspector Hill conducted an inspection at 566 25<sup>th</sup> Street N.E. On the second floor of the building, he entered a room equipped as a kitchen with items that included a refrigerator, sink, and stove.<sup>1</sup> He found Mr. Wiggins and two or three other gentlemen in the room. He also saw a number of items used in barbering, including shears, barber clippers, and scissors. However, there was no sign for a barber shop, either outside of the building or outside the room equipped as a kitchen. In addition, Inspector Hill did not observe anyone make payment for barbering services.

Mr. Jackson, a retired barber, and Mr. Payne, a retired physical education teacher, have both have known Mr. Wiggins for more than 50 years. They routinely go to the kitchen area on the second floor at 566 25<sup>th</sup> Street, N.E. to meet and converse with Mr. Wiggins and other friends. Although they have seen Mr. Wiggins cut the hair of visitors in the kitchen area, they have not seen anyone make payment. Ms. Raglin, who is a semi-retired real estate agent and ANC representative, also goes to 566 25<sup>th</sup> Street, N.E. to talk with friends and neighbors. Mr. Wiggins has also cut her hair there, but he has never charged for that service.

Inspector Hill requested searches of DCRA records to determine if a certificate of occupancy or a business license had been issued to Respondents to operate a barber shop at 566 25<sup>th</sup> Street, N.E. Searches conducted of DCRA records showed that Respondents did not have a

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<sup>1</sup> There was a fast food restaurant on the first floor of the building at street level, but no violations were charged with respect to that location. Respondents exhibits admitted into evidence included a certificate of occupancy for the restaurant issued to the partnership that owns and operates the restaurant. RX 206

business license or a certificate of occupancy to operate a barber shop at the time of the inspection. Petitioner's Exhibits "PX" 101-102.

**B. Charges relating to operation of apartment house at 566 25<sup>th</sup> Place N.E.**

During the inspection, Inspector Hill talked to a man in the building who told Inspector Hill that he had lived in the building for a few years. Inspector Hill did not know how much rent the man paid and took no photographs of the man's living quarters. Inspector Hill said that there was another room on the second floor where the kitchen was located, but that he did not enter it. Ms. Raglin, who is a real estate agent, was not aware that there were any apartments in the building. Mr. Wiggins said that he had allowed the man to live there without charge because he was indigent.

Inspector Hill requested searches of DCRA records to determine if a certificate of occupancy or a business license had been issued to Respondents to operate an apartment house at 566 25<sup>th</sup> Street, N.E. The searches showed that neither a certificate of occupancy or business license to operate an apartment house was in effect at the time of the inspection. PX 103-104.

**III Conclusions of Law - Notice of Infraction S702380- 566 25<sup>th</sup> Place N.E**

Business License Charges Respondents were charged with two violations of D.C. Official Code §47-2851.02(a)(1), one for failing to have a business license to operate a barber shop, and the other for failing to have a business license to operate an apartment house. The statute Respondents were charged with violating is a general provision, which requires that a person obtain a business license before engaging in a business for which a person is "required

nder law to obtain a license.”<sup>2</sup> A business license to operate a barbershop is required by D.C. Official Code §47-2851.03a (k)(4)(A), while a business license to rent or lease residential property is required by D.C. Official Code § 47-2828.<sup>3</sup> As defined in the business licensing statute, a “business means any trade, profession, or activity which provides, or holds itself out to provide, goods or services to the general public or to any portion of the general public, for hire or compensation, in the District of Columbia.” D.C. Official Code §47-2851.01 (1B)(A).

Thus, in order to establish that a respondent was engaged in an activity requiring a business license, the Government must prove that a respondent provided a good or service to the general public for hire and compensation. This had not been established with respect to the charge of operating a barber shop without a license. First, there is no proof of any payment for services, and thus no evidence that services were performed for hire or compensation. Secondly, there is no evidence that services were offered to the general public. As the Inspector acknowledged, there were no signs advertising the presence of a barber shop to the general public. In addition, the evidence establishes that the kitchen on the second floor of 566 25<sup>th</sup> Street, N.E. served as a neighborhood gathering place for retired friends of Mr. Wiggins, some of

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<sup>2</sup> D.C. Official Code § 47-2851.02, provides:

(a) A person which is required under law to obtain a license issued in the form of an endorsement to engage in a business in the District of Columbia shall not engage in such business in the District of Columbia without having first obtained a basic business license and any necessary endorsements in accordance with this subchapter.

(b) A license shall be required for each business location.

<sup>3</sup> D.C. Official Code § 47-2828 states as follows:

[O]wners of residential buildings in which one or more dwelling units or rooming units are offered for rent or lease shall obtain from the Mayor a license to operate such business...

whom he had known for decades. Consequently no business license was required for the activities conducted there.

The Government has also not proven that Respondents were engaged in the business of renting or leasing residential property at 566 25<sup>th</sup> Place N.E. The Government's only evidence relating to the issue of whether dwelling or rooming units were rented in the building is the hearsay testimony of the inspector that an unidentified individual told him that he resides in the building. The Government presented no evidence about what amount that individual paid in rent. There are also no photographs of a rental unit, or even testimony from the inspector that he entered a rental unit. This evidence is simply insufficient to establish that Respondents were engaged in the business of renting apartments at this location.

Certificate of Occupancy Charges Respondents were also charged with two violations of 11 DCMR 3203 at 566 25<sup>th</sup> Street, N.E, one for failing to have a certificate of occupancy for a barbershop and the other for failing to have a certificate of occupancy for an apartment house.<sup>4</sup> Since I have found, for the reasons given above, that the evidence does not establish that Respondents were operating a barber shop or an apartment house at 566 25<sup>th</sup> Street, N.E, they were not required to obtain a certificate of occupancy for these uses. Consequently, these violations will also be dismissed.

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<sup>4</sup> 11 DCMR 3203.1 provides in relevant part:

... no person shall use any structure, land, or part of any structure or land for any purpose other than a one-family dwelling until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR.

#### **IV. Findings of Fact: Notice of Infraction S702381-2401 Benning Road, N.E.**

Respondents are the owners of the property at 2401 Benning Road, N.E, which they purchased in the 1950's.

##### **A. Charges relating to operation of apartment house at 2401 Benning Road, N.E.**

Inspector Hill inspected the building at 2401 Benning Road, N.E. as a result of a complaint. A woman he spoke with in the building said she pays rent to Mr. Wiggins and that there are two other tenants in the building. The Inspector took a number of photographs in her apartment, including photographs of a kitchen and bathroom. PX 111. Among other things, the photographs show an area of extensive damage to the ceiling, where it appears that plaster has fallen off. PX 111. Although the Notice of Infraction alleges that the violation occurred on January 31, 2010, the date imprinted on each of the more than 20 photographs taken of the apartment is a year later, on January 31, 2011.

In 1961, a certificate of occupancy was issued to Mr. Wiggins to use the second floor of the premises known as 569 24<sup>th</sup> N.E. as a flat. RX 200. This address appears on one of the entrances to the building and the address of 2401 Benning Road, N.E. appears on the other entrance. The square and lot number on the certificate of occupancy is the same as the square and lot number for 2401 Benning Road, NE. Consequently, the certificate of occupancy pertained to the premises that were inspected by Inspector Hill.<sup>5</sup>

Inspector Hill requested searches of DCRA records to determine if a certificate of occupancy or a business license had been issued to Respondents to operate an apartment house at

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<sup>5</sup> The Inspector contended that the certificate of occupancy was not a valid for the premises inspected because the address differed from the official address now used.

2401 Benning Road, N.E. The manager of the Permit Operations Division reported that record searches conducted by his office showed that a certificate of occupancy had not been issued from the period January 1, 2011 through February 11, 2011. PX 107. The manager of the Business Licensing Division reported that a business license for an apartment had not been issued for period January 1, 2011 to March 18, 2011. PX 108. The report on the searches thus state that they were conducted for a period that was approximately a year after the date of the violations charged in the Notice of Infraction. There is no report on whether a certificate of occupancy had been issued for the address of 569 24<sup>th</sup> Street, N.E, the address that appears on the certificate of occupancy issued to Respondents.

**B. Charges relating to operation of a commercial rental property at 2401 Benning Road**

A church is located on the first floor at 2401 Benning Road N.E. The name of the church does not appear in the record. Inspector Hill requested a search of DCRA records to determine if a certificate of occupancy has been issued to Respondents to use 2401 Benning Road, N.E as a commercial rental property. In a report dated February 28, 2011, the manager of the Permit Operations Division reported that a certificate of occupancy was not issued for the period January 1, 2011 through February 11, 2011. PX 109. A report on a records search in the business licensing division indicates that a general business license had not been issued to the premises at 2401 Benning Road, N.E. from the period January 1, 2011 through March 18, 2011. PX 110.

**V. Conclusions of Law: Notice of Infraction S702381-2401 Benning Road, N.E.**

The violations charged at 2401 Benning Road N.E. have not been established because the evidence presented by the Government does not prove that these violations existed on January



31, 2010, the date the violations are alleged to have occurred in the Notice of Infraction. At the hearing, the inspector maintained that January 31, 2010 was the date that he inspected the property. He asserted that the date of January 31, 2011 imprinted on the photographs was incorrect only because he changed the battery. He also maintained that he conducted a search that showed that the relevant business licenses and certificates of occupancy were not in effect on January 31, 2010, and the search reports were inaccurate because of errors made by the offices that produced the reports. It is highly improbable that multiple searches conducted by two different office and the failure of a camera battery all produced the same error. The Government's contentions are therefore rejected, and the four violations charged in the Notice of Infraction will therefore be dismissed because of a material defect in the Notice of Infraction. <sup>6</sup>

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 11<sup>th</sup> day of April, 2012:

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<sup>6</sup> Although the violations charged in this Notice of Infraction are being dismissed, there may be compliance issues at this property which could make Respondents subject to another Notice of Infraction if they are not remedied. If residents of this building are making payments to Mr. Wiggins, he is required by D.C. Official Code §47-2828 to obtain a business license to rent residential property. If there are three apartments in the building, the certificate of occupancy obtained in 1961 to rent a "flat" may not be adequate for the current use.

Moreover, there is no evidence about whether a certificate of occupancy has been issued for use of the first floor of the building as a church. Typically, a certificate of occupancy for a commercial use is obtained by the commercial tenant leasing the property. There is no evidence in the record about the name of the church that occupies the first floor of the building or whether it has secured a certificate of occupancy for that use. It is particularly important that space used for assembly purposes such as church, where numerous people may gather, be inspected to insure that fire exits and other fire safety measures are adequate for the occupancy. Consequently, an effort should be made to determine if a certificate of occupancy has been issued to use the first floor as a church, and a certificate should be applied for if a certificate as not already been issued for that use.

**ORDERED**, that Notices of Infraction S702380 and S702381 and these cases are **DISMISSED WITH PREJUDICE**. The appeal and reconsideration rights of any party aggrieved by this Order appear below.

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Mary Masulla  
Administrative Law Judge

**A party may ask the Administrative Law Judge to change the Final Order and may also file an appeal. There are important time limitations described below for doing so.**

### **HOW TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO CHANGE THE FINAL ORDER**

Under certain limited circumstances and within certain time limits, a party may file a written request asking the administrative law judge to change a final order. OAH Rule 2828 explains the circumstances under which such a request may be made. Rule 2828 and other OAH rules are available at [www.oah.dc.gov](http://www.oah.dc.gov) and at the Office of Administrative Hearings (OAH).

A request to change a final order does not affect the party's obligation to comply with the final order and to pay any fine or penalty. If a request to change a final order is received at OAH **within 10 calendar days** after the date the Final Order was served (**15 calendar days** if OAH mailed the final order to you), the period for filing an appeal with the District of Columbia Court of Appeals does not begin to run until the Administrative Law Judge rules on the request. **A request for a change in a final order will not be considered if it is received at OAH more than 120 calendar days after the date the Final Order was served (125 calendar days if OAH mailed the Final Order to you).**

### **HOW TO FILE AN APPEAL ON INFRACTION OF ZONING REGULATIONS UNDER TITLE 11 OF THE MUNICIPAL REGULATIONS**

Pursuant to D.C. Official Code §§ 2-1831.16(b) and 2-1803.01, an appeal concerning an infraction of 11 DCMR 3203 may be filed with the District of Columbia Board of Zoning Adjustment (the Board):

District of Columbia Board of Zoning Adjustment  
441 4<sup>th</sup> Street, N.W., Suite 200 South  
Washington, DC 20001  
202-727-63110

In accordance with 11 DCMR 3112.2(a) an appeal to the Board must be filed within sixty (60) days from the date the person had notice or knowledge of the decision. An appeal must be on the appropriate form provided by the Board, and at the time of filing, any fee established must be paid. Information regarding the Board and the procedure for appeals can be obtained on the Board's web site: <http://dcoz.dc.gov/services/bza/bza.shtm>

## HOW TO FILE AN APPEAL OF NON-ZONING INFRACTIONS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), an appeal may be filed with the District of Columbia Court of Appeals on infractions other than zoning infractions under Title 11 of the D.C. Municipal Regulations. A Petition for Review and six copies must be filed with the court at the following address

Clerk  
District of Columbia Court of Appeals  
430 E Street, NW, Room 115  
Washington, DC 20001

The Petition for Review (and required copies) may be mailed or delivered to the court, and must be received there within 30 calendar days of the mailing date of this Order, pursuant to D.C. App. R. 15(a)(2). There is a \$100 fee for filing a Petition for Review. Persons who are unable to pay the filing fee may file a motion and affidavit to proceed without the payment of the fee when they file the Petition for Review. Information on petitions for review can be found in Title III of the Court of Appeals' Rules, which are available from the Clerk of the Court of Appeals, or at [www.dcappeals.gov](http://www.dcappeals.gov).

### IMPORTANT NOTICES:

- 1. The amount of a lawfully imposed fine cannot be modified or reduced on appeal. D.C. Official Code § 2-1831.16(g).**
- 2. Filing an appeal does not stay (stop) the requirement to comply with a Final Order, including any requirement to pay a fine, penalty or other monetary sanction imposed by a Final Order. If you wish to request a stay, you must first file a written motion for a stay with the Office of Administrative Hearings. If the presiding Administrative Law Judge denies a stay, you then may seek a stay from the Court of Appeals or the Board as appropriate.**

### Certificate of Service:

#### By U.S. Mail (Postage Paid):

Frazer Walton, Esq.  
920 Burns Street, S.E.  
Washington, DC. 20019

I hereby certify that on \_\_\_\_\_, 2012 this document was caused to be served upon the above-named parties at the addresses listed and by the means stated.

\_\_\_\_\_  
Clerk / Deputy Clerk

#### By Inter-Agency Mail:

Melinda Bolling, Esq.  
**Attn: Terrell Hill**  
Department of Consumer and  
Regulatory Affairs  
1100 4<sup>th</sup> Street, SW  
Washington, DC 20002

